

HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARIO E. YOUNG, JR.,

Plaintiff,

v.

SAFELITE FULFILLMENT, INC., et al.,

Defendants.

Case No. 2:19-cv-01027-JLR

**STIPULATED MOTION AND
~~PROPOSED~~ ORDER STAYING CASE
PENDING WASHINGTON SUPREME
COURT'S RESOLUTION OF CERTIFIED
QUESTION IN *SAMPSON v. KNIGHT
TRANSPORTATION, INC.***

JLR

RECITALS

WHEREAS, on or about June 3, 2019, Plaintiff MARIO E. YOUNG, JR. ("Plaintiff") filed the operative putative Class Action Complaint for Unpaid and Wrongfully Withheld Wages (the "Complaint") in this action in the Superior Court of the State of Washington in and for the County of King at Seattle [Dkt. #1-2];

WHEREAS, on July 2, 2019, Defendant SAFELITE FULFILLMENT, INC. ("Defendant") removed Plaintiff's above-described state court action to this Court [Dkt. #1] invoking the subject matter jurisdiction of this Court under the Class Action Fairness Act ("CAFA"), which the parties agree is properly invoked in this action;

PLAINTIFF'S PUTATIVE UNPAID NON-PRODUCTIVE TIME CLAIMS

WHEREAS, in his Complaint, Plaintiff alleges, *inter alia*, that in *Carranza v. Dovex Fruit Co.*, 190 Wash.2d 612 (2018) ("*Carranza*"), the Washington Supreme Court "held that employers who pay agricultural workers on a piece-rate basis must compensate the workers on a separate hourly basis for time spent performing activities that are outside the scope of the piece rate picking work" and that "Defendant's PPP piece-rate compensation system is virtually indistinguishable from the piece rate scheme[] in *Carranza*" [Dkt. #1-2, ¶¶ 16-17];

WHEREAS, in his Complaint, Plaintiff further alleges that, in *Sampson v. Knight Transportation, Inc.*, No. 2:17-cv-00028-JCC, 2018 WL 2984825, at *8-9 (W.D. Wash. June 14, 2018) (Coughenour, J.), the court "recogniz[ed] that while ... non-productive time claims were previously denied [class] certification" on the grounds that such claims were not cognizable under Washington law, the court's prior holdings were "called into question by the Washington Supreme Court's recent ruling in *Caranza* [*sic*]" [Dkt. #1-2, ¶ 16];

WHEREAS, based upon Plaintiff's interpretation of *Carranza* and *Sampson*, the Complaint asserts causes of action for (1) Violations of RCW 49.46.020, 090 for Failure to Pay Minimum Wage for All Hours Worked, (2) Violation of RCW 49.52.050(2) for Failure to Satisfy Wage Obligations Assumed Through Contract, and (3) Double Damages for Willful and Intentional Withholding of Wages Pursuant to RCW 49.52.050, 070 stemming therefrom [*id.*, ¶¶ 39-52];

1 **WHEREAS**, in support of his Second and Third Causes of Action, Plaintiff alleges that
 2 “Defendant paid its mobile technicians and technicians on a piece-rate scheme under which it did not
 3 compensate mobile technicians and technicians separately and hourly, or at all, for ... certain non-
 4 installation tasks as required under Washington law,” including, but not limited to, “loading company
 5 vans with equipment, cleaning company vans, traveling in company vehicles between the shop and
 6 the install site, paperwork, pre and post-installation inspections, meetings and orientations, and
 7 telephone calls,” and asserts that “Plaintiff seeks relief on a class-wide basis for unpaid wages for ...
 8 all work performed” [*id.*, ¶¶ 2-3; *see also id.*, at ¶¶ 13, 16-17, 42, 47];

9 **WHEREAS**, in *Sampson*, 2018 WL 2984825, at *8, currently pending but stayed in this
 10 District, the plaintiffs similarly contend that the defendant’s piece-rate compensation scheme violates
 11 Washington’s Minimum Wage Act (the “MWA”) because there, “drivers are not paid minimum wage
 12 for the time they spend conducting pre-trip inspections, completing paperwork, loading and
 13 unloading the truck, and refueling”;

14 **WHEREAS**, in *Sampson*, 2018 WL 2984825, at *9, the Court recognized that “[c]ourts in
 15 this district ... have previously held that Plaintiffs’ on-duty, not driving [non-productive time] claims
 16 are not cognizable under Washington law,” but it reasoned that “these prior holdings are called into
 17 question by the Washington Supreme Court’s recent ruling in [*Carranza*],” on the grounds that the
 18 Washington Supreme Court’s “interpretation of the MWA would seem to apply to all employers,”
 19 not just agricultural workers;

20 **WHEREAS**, the district court in *Sampson* “conclude[d] that the law underlying Plaintiffs’ on
 21 duty, not driving [non-productive time] claim is not clearly determined, and that the Washington
 22 Supreme Court is in a better position than this Court to answer this question,” *see id.*, and therefore
 23 certified the following question to the Washington Supreme Court: “Does the Washington Minimum
 24 Wage Act require non-agricultural employers to pay their piece-rate employees per hour for time
 25 spent performing activities outside of piece-rate work?”;

26 **WHEREAS**, briefing on the district court’s certified question in *Sampson* was completed in
 27 the Washington Supreme Court on December 21, 2018, the Washington Supreme Court heard oral

3 **WHEREAS**, the parties agree that the Washington Supreme Court's resolution of the
4 question certified in *Sampson* may directly impact the disposition of Plaintiff's claims asserted in this
5 action, which assert an unpaid non-productive time wages claim similar to that asserted by the
6 plaintiffs in *Sampson*;

7 **WHEREAS**, the parties' agree that a stay of this case pending the Washington Supreme
8 Court's resolution of the certified question in *Sampson v. Knight Transportation, Inc.* (Wash. S.Ct.
9 Case No. 96264-2), which could bear directly upon Plaintiff's putative "non-productive" time unpaid
10 wage claims in this action, would be prudent and efficient for both the Court and the parties, and that
11 good cause exists to stay this case pending resolution of the *Sampson* case, but with a full reservation,
12 and without waiver or limitation, of the parties' respective rights, claims, remedies, defenses, and
13 positions in this action including as to the issues recited above. A stay will also permit the parties to
14 engage in early mediation for this matter following the exchange of informal discovery, and the
15 parties currently aim to attend private mediation in early 2020.

17 **NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and between
18 Plaintiff, on the one hand, and Defendant, on the other hand, by and through their respective
19 undersigned counsel, and subject to the Court's approval, that:

1. The dates set forth in the Court's Rule 16(B) and Rule 23(D)(2) Scheduling Order Regarding Class Certification Motion [Dkt. #13], and all other deadlines currently set in this action be vacated, including without limitation Plaintiff's deadline to complete discovery on class certification and to move for class certification:

24 2. This action be stayed, in its entirety and for all purposes, pending the Washington
25 Supreme Court's decision on the certified question in *Sampson v. Knight Transportation, Inc.*, Wash.
26 S.Ct. Case No. 96264-2;

3. Within fourteen (14) days of the Washington Supreme Court's decision in *Sampson*, the parties shall file a joint status report with the Court that (1) informs the Court regarding that Court's decision, (2) sets forth the parties' respective and/or collective positions as to whether the stay should remain in effect, and (3) provides the Court with agreed-upon and/or proposed deadlines for [i] completion of discovery on class certification and for Plaintiff to move for class certification under Fed. R. Civ. P. 23; and [ii] submission of an updated Joint Status Report and Discovery Plan.

4. By entering into and submitting this Stipulated Motion, the parties fully reserve, and do not waive or limit, their respective rights, claims, remedies, defenses, and positions in this action, including as to the issues recited above.

DATED: August 26, 2019

Respectfully submitted,

/s/ India Lin Bodien

/s/ Michael J. Shoenfelt

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PROPOSED ORDER

This matter came before the Court on the parties' Stipulated Motion Staying Case Pending Washington Supreme Court's Resolution of Certified Question in *Sampson v. Knight Transportation, Inc.* (the "Stipulated Motion"). The Court, having reviewed the Stipulated Motion, and good cause appearing for the relief sought therein, hereby orders as follows:

1. The dates set forth in the Court's Rule 16(B) and Rule 23(D)(2) Scheduling Order Regarding Class Certification Motion [Dkt. #13], and all other deadlines currently set in this action shall be and hereby are vacated, including without limitation Plaintiff's deadline to complete discovery on class certification and to move for class certification;

2. This action shall be and hereby is stayed, in its entirety and for all purposes, pending the Washington Supreme Court's decision on the certified question in *Sampson v. Knight Transportation, Inc.*, Wash. S.Ct. Case No. 96264-2;

3. Within fourteen (14) days of the Washington Supreme Court's decision in *Sampson*, the parties shall file a joint status report with the Court that (1) informs the Court regarding that Court's decision, (2) sets forth the parties' respective and/or collective positions as to whether the stay should remain in effect, and (3) provides the Court with agreed-upon and/or proposed deadlines for [i] completion of discovery on class certification and for Plaintiff to move for class certification under Fed. R. Civ. P. 23; and [ii] submission of an updated Joint Status Report and Discovery Plan.

4. The parties' entering into and submission of this Stipulated Motion is without waiver or limitation of their respective rights, claims, remedies, defenses, and positions in this action, including as to the issues recited therein.

IT IS SO ORDERED.

DATED this 3rd day of Sept., 2019.



THE HONORABLE JAMES L. ROBERT
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system that will send notification of such filing to the following:

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I further certify that I mailed a true and correct copy of the foregoing to the following non-CM/ECF participant: N/A.

Executed on August 27, 2019, at Los Angeles, California.

/s/ Jaclyn Blackwell

Jaclyn Blackwell
Office Manager